Kesatuan Pegawai-Pegawai Bumiputra-Commerce Bank Bhd (Kepak Bumi-Commerce) v Association of Bank Officers, Peninsular Malaysia

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–04–54 OF 2004
GOPAL SRI RAM, HASHIM YUSOFF AND AZMEL JJCA
6 MARCH 2006

Labour Law — Trade Union — Registration — Registering same category of workmen — Whether registration inconsistent with objects and rules of trade union — Trade Unions Act 1959 s 12(2)

The appellant was an in-house trade union. When Bank Bumiputra Malaysia Berhad ('BBMB') was in existence, the appellant represented all grades from 34 to 39 in that Bank. These were persons employed in executive and managerial capacity. Later, BBMB merged with another bank, Bank of Commerce Berhad. The merged bank is now known as Bank Bumiputra Commerce Berhad ('BCB').

The present dispute arose out of an application by the appellant to seek registration by the Director General of Trade Unions to represent the same category of workmen in BCB. The application was granted by the Director General. The respondents who were Association of Bank Officers, Peninsular Malaysia ('ABOM') and Kesatuan Kakitangan Eksekutif Bank of Commerce Semenanjung Malaysia ('BOCESU') objected to the registration. Dissatisfied with the decision of the Director General, the respondents sought judicial review. After discussion of main issues, the learned judge quashed the decision of the Director General. The appellant's counsel, on the other hand argued that the learned judge misdirected himself when concluded that the exercise of the discretion by the Director General was fatally flawed. The issue was whether the registration of the appellant would forward a purpose inconsistent with its objects and rules.

Held, dismissing the appeals:

(1) The registration of the appellant would indeed be in furtherance of a purpose inconsistent with its objects and rules because in its application it had made clear that it sought to represent persons who fall outside the scope of its authorized representation. The fact that the Director General did not take this matter into account was obvious based on the affidavit filed by him (see para 6).

(2) The Director General also failed to take into account the considerations set out in s 12(2) of the Trade Unions Act 1959. It is settled law that a public decision maker who failed to take into account relevant considerations and decision was made not in accordance with law is liable to be quashed on an application for

judicial review (see para 7); *Anisminic Ltd v Foreign Compensation v Commission & Anor* [1969] 2 AC para 304 followed.

[Bahasa Malaysia summary

Perayu adalah kesatuan sekerja dalaman. Apabila Bank Bumiputra Malaysia Berhad (('BBMB') wujud, perayu mewakili kesemua gred 34 hingga 39 dalam Bank tersebut. Ini merupakan mereka yang diambil bekerja dalam kapasiti eksekutif dan pengurusan. Kemudian, BBMB telah bergabung dengan bank lain, Bank of Commerce berhad. Bank gabungan ini sekarang dikenali sebagai Bank Bumiputra Commerce Berhad ('BCB').

Pertikaian yang kini timbul adalah daripada satu permohonan oleh perayu memohon pendaftaran oleh Ketua Pengarah Kesatuan Sekerja untuk mewakili kategori yang sama pekerja-pekerja dalam BCB. Permohonan tersebut telah dibenarkan oleh Ketua Pengarah. Responden-responden yang merupakan Kesatuan Pegawai-Pegawai Bank, Semenanjung Malaysia ('ABOM') dan Kesatuan Kakitangan Eksekutif Bank of Commerce Semenanjung Malaysia ('BOCESU') membantah terhadap pendaftaran itu. Berasa tidak puas hati dengan keputusan Ketua Pengarah itu, responden-responden telah memohon semakan semula kehakiman. Selepas perbincangan isu-isu utama, hakim yang bijaksana telah membatal keputusan Ketua Pengarah itu. Peguam perayu, sebaliknya berhujah bahawa hakim yang bijaksana telah salah arah apabila memutuskan bahawa penggunaan budi bicara oleh Ketua Pengarah adalah salah. Isunya adalah sama ada pendaftaran perayu mempunyai tujuan yang tidak konsisten dengan objektif dan peraturannya.

Diputuskan, menolak rayuan-rayuan tersebut:

(1) Pendaftaran perayu sememangnya mempunyai tujuan yang tidak konsisten dengan objektif dan peraturannya kerana dalam permohonannya adalah jelas bahawa ia memohon untuk mewakili mereka yang terlingkung luar daripada skop perwakilannya yang dibenarkan. Hakikat bahawa Ketua Pengarah tidak mengambilkira perkara tersebut adalah jelas berdasarkan afidavit yang difailkan oleh beliau (lihat perenggan 6).

(2) Ketua Pengarah itu juga gagal mengambilkira pertimbangan yang dinyatakan dalam s 12(2) Akta Kesatuan Sekerja 1959. Adalah undang-undang tetap bahawa pembuat keputusan am yang gagal mengambilkira pertimbangan yang relevan dan keputusan yang dibuat tidak bersesuaian dengan undang-undang boleh dibatalkan atas satu permohonan untuk semakan semula kehakiman (lihat perenggan 7); *Anisminic Ltd v Foreign Compensation v Commission & Anor* [1969] 2 AC 304 diikut.]

Notes

For cases on registration on trade union, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1684–1687.

Cases referred to

Anisminic Ltd v Foreign Compensation Commission & Anor [1969] 2 AC 304. (folld)

Legislation referred to
Trade Unions Act 1959 s 12(2), (3)

VK Raj (P Kuppusamy & Co) for the appellant.
LG Seah (Lobo & Associates) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] This, the judgment of the court.

[2] The appellant in this case is an in-house trade union. When Bank Bumiputra Malaysia Berhad ('BBMB') was in existence, the appellant represented all grades from 34 to 39 in that bank. These were persons employed in executive and managerial capacity. Later, as is common knowledge, BBMB merged with another bank, Bank of Commerce Berhad. The merged bank is now known as Bank Bumiputra Commerce Berhad ('BCB').

[3] The present dispute arises out of an application by the appellant to seek registration by the Director General of Trade Unions to represent the same category of workmen in BCB. The Director General granted the application. The respondents who are Association of Bank Officers, Peninsular Malaysia ('ABOM') and Kesatuan Kakitangan Eksekutif Bank of Commerce Semenanjung Malaysia ('BOCESU') objected to the registration. Dissatisfied with the decision of the Director General, they sought judicial review of his decision. The application was heard by Raus Sharif J, a judge with much experience in matters relating to judicial review. In a carefully considered judgment, after discussing the main issues in this case, the learned judge quashed the decision of the learned Director General.

[4] Mr Raj, of counsel for the appellant, has argued strenuously that the learned judge misdirected himself when he concluded that the exercise of the discretion by the Director General was fatally flawed. In order to appreciate his argument, it is necessary for us to hearken to the relevant statutory provision. It is s 12 of the Trade Unions Act 1959 ('the Act') and this is what it says:

> 12. Registration
>
> (1) The Director General may, upon receiving an application under section 10, and subject to this section, register the trade union in the prescribed manner.
>
> (2) The Director General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry if he is satisfied that there is in existence a trade union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that there is be another trade union in respect thereof.
>
> (3) The Director General shall refuse to register a trade union if
>
> (a) he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or inconsistent with its objects and rules;
>
> (b) any of the objects of the trade union is unlawful;

(c) he is not satisfied that the trade union has complied with this Act and of the regulations;

(d) he is satisfied that the objects, rules and constitution of the trade union conflict with any of the provisions of this Act or of any regulations; or

(e) the name under which the trade union is to be registered is —

(i) identical to that of any other existing trade union, or so nearly resembles the name of such other trade union as, in the opinion of the Director General, is likely to deceive the public or the members of either trade union; or

(ii) in the opinion of the Director General, undesirable,

unless the trade union alters its name to one acceptable to the Director General.

[5] Section 12(3) of the Act, as may be seen, mandates the Director General to refuse registration if to the words of the statute:

… he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or in consistent to its objectives and rules.

[6] The question here is whether the registration of the appellant would forward a purpose inconsistent with its objects and rules. Miss LG Seah, the learned counsel for ABOM has argued that this is indeed the case. We are in agreement with her submission. In our judgment, the registration of the appellant would indeed be in furtherance of a purpose inconsistent with its objects and rules because in its application it has made it clear that it seeks to represent persons who fall outside the scope of its authorised representation. That the Director General did not take this matter into account is obvious based on the affidavit filed by him.

[7] Further, as correctly observed by the learned judge, the Director General also failed to take into account the considerations set out in s 12(2) of the Act. It is settled law that a public decision maker who fails to take into account relevant considerations and makes a decision not in accordance with law is liable to be quashed on an application for judicial review: see *Anisminic Ltd v Foreign Compensation Commission & Anor* [1969] 2 AC 304.

[8] Having very carefully scrutinised the judgment of the learned judge, we are satisfied that no appealable error is disclosed. There are two concluding remarks that we need to make. First, there are two appeals before us, one directed against ABOM and the other against BOCESU. Second, that this is a judgment of the court given in respect of both appeals.

[9] For the reasons already given, these appeals fail. We are unanimous in deciding that they be dismissed. The costs in respect of each appeal shall be paid by the appellant to each respondent. However, we direct the taxing registrar to allow only one item of getting up in Civil Appeal No W–04–54 of 2004. The bill in respect of Civil Appeal No W–04–55 of 2004 should be limited to profit costs and out of pocket expenses only. The reason for us making this order is because the respondent in Civil Appeal No W–04–55 of 2004 merely rode on the coat-tails of ABOM's appeal.

[10] The deposit in each appeal shall go to each respondent to account of taxed costs. All other orders made in the High Court are affirmed.

Appeals dismissed.

Reported by Janani Suntharalingam